STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LUCY MARGOLIS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 98-4915RX
	)	
MIAMI-DADE COUNTY SCHOOL BOARD,	)	
	)	
Respondent.	)	
_____	)	

FINAL ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to Section 120.57(1), Florida Statutes, on March 26, 1999, by video teleconference at sites in Fort Lauderdale and Tallahassee, Florida, before Stuart M. Lerner, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Lucy Margolis, pro se
10430 Southwest 99th Street
Miami, Florida 33176

For Respondent: Twila Hargrove-Payne, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 400
Miami, Florida 33132

STATEMENT OF THE ISSUES

1. Whether the challenged portions of Respondent's Manual of Administrative Personnel Procedures (MAPP), which is incorporated by reference in School Board Rule 6Gx13-4D-1.022 (specifically) that paragraph in subsection C-2 of the MAPP which

references Section 231.29, Florida Statutes, and the following language in subsection C-8 of the MAPP, under Florida Principal Competency (FPC) No. 11: "The principal who has TACTICAL ADAPTABILITY: looks at problems as if there were no rules, then decides what to do to resolve the situation tactfully") are invalid exercises of delegated legislative authority, within the meaning of Chapter 120, Florida Statutes, for the reasons asserted by Petitioner.

2. Whether Petitioner has standing, pursuant to Chapter 120, Florida Statutes, to challenge these provisions.

PRELIMINARY STATEMENT

On November 2, 1998, Petitioner filed a petition with the Division of Administrative Hearings (Division) challenging the above-described portions of School Board Rule 6Gx13-4D-1.022.[1] In her petition, Petitioner identified herself as: a parent of a child enrolled in the MDCPS [Miami-Dade County Public Schools]; a parent representative member of the Educational Excellence Council of Miami Killian Senior High School, where her child is a ninth-grade student; and "an advocate for better education."

By order issued November 10, 1998, the Division's Chief Judge assigned the case to the undersigned Administrative Law Judge, who, on November 12, 1998, issued a Notice of Hearing by Video Teleconference scheduling the final hearing in this case for December 9, 1998. On November 17, 1998, Respondent filed a motion requesting a continuance of the final hearing, and

thereafter, on November 18, 1998, filed an Amended Motion for Continuance of Final Hearing. A hearing on the latter motion was held by telephone conference call on November 19, 1998. During the telephone conference call, Petitioner indicated that she did not object to the final hearing being continued, provided that it was rescheduled for a date on or before December 18, 1998, or on or after March 1, 1999. By Order issued November 23, 1998, Respondent's Amended Motion for Continuance was granted. The final hearing was subsequently rescheduled for March 26, 1999.

On March 25, 1999, the parties filed their Pre-Hearing Stipulation. In their Pre-Hearing Stipulation, the parties stated the following with respect to the "issues of fact which remain to be litigated":

> a) Petitioner's Position:
>
> That Petitioner has standing to challenge the Rule and MAPP.
>
> That Respondent has materially failed to follow the applicable APA rulemaking procedures or requirements regarding implementation, interpretation and/or making s. 231.29, F.S., specific within the Rule and MAPP since the words were incorporated therein.
>
> That certain principal competencies contained in the MAPP exceed Respondent's grant of rulemaking authority and/or enlarge, modify, or contravene the specific provisions of the law implemented.
>
> That a portion of the MAPP which simply paraphrases s. 231.29, F.S. is vague, fails to establish adequate standards for agency decisions, and/or vests unbridled discretion in the agency.

b) Respondent's Position:

Whether the challenged excerpts of MAPP are a valid exercise of delegated legislative authority.

Whether the School Board properly followed rulemaking procedures when School Board Rule 6Gx13-4D-1.022 and MAPP were amended in November 5, 1997 and October 21, 1998.

Whether Petitioner has standing to challenge the MAPP. . . .

In their Pre-Hearing Stipulation, the parties stated the following with respect to the "issues of law which remain for determination of the Administrative Law Judge":

a) Petitioner's Position:

Respondent's failure to properly comply with all applicable APA rulemaking procedures regarding implementation, interpretation and/or making s. 231.29 F.S. specific within the Rule and MAPP should entitle Petitioner (a) to have this portion of the Rule declared an invalid exercise of delegated legislative authority or (b) to challenge this portion of the Rule based upon 120.56(2)[sic], F.S.

That certain principal competencies contained in the MAPP exceed Respondent's grant of rulemaking authority and/or enlarge, modify or contravene the specific provisions of law implemented; and, as a result, that portion of the MAPP should be declared an invalid exercise of delegated legislative authority.

That the portion of the MAPP which paraphrases s. 231.29, F.S., is vague, fails to establish adequate standards for agency decisions, and/or vests unbridled discretion in the agency; and, as a result, that portion of the MAPP should be declared an invalid exercise of delegated legislative authority.

Petitioner has standing to challenge School Board Rule 6Gx13-4D-1.022 and MAPP.

b) Respondent's Position:

Petitioner does not have standing to challenge School Board Rule 6Gx13-4D-1.022 and MAPP.

School Board Rule 6Gx13-4D-1.022 and MAPP were properly amended on November 5, 1997 and October 21, 1998.

As noted above, the final hearing in this case was held on March 26, 1999. Three witnesses testified at the hearing: Petitioner; Dr. Joyce Annunziata, Senior Executive Director of Respondent's Office of Professional Standards; and Ileana Menendez, Respondent's Clerk. In addition to the testimony of these three witnesses, numerous exhibits were offered and received into evidence.

At the close of the evidentiary portion of the final hearing on March 26, 1999, the undersigned, after receiving input from the parties, established, without objection from the parties, the following deadlines: for the filing of proposed final orders-- 30 days from the date of the filing of the hearing transcript with the Division; and for the issuance of the undersigned's final order-- 30 days from the filing date of the last-filed proposed final order. The Transcript of the final hearing was filed with the Division on April 21, 1999. Petitioner and Respondent filed their proposed final orders on May 17, 1999, and May 21, 1999, respectively. These post-hearing submittals have been carefully considered by the undersigned.

FINDINGS OF FACT

Based upon the evidence adduced at hearing and the record as a whole, including the parties' Pre-Hearing Stipulation,[2] the following findings of fact are made:

1. Respondent (School Board) is a duly-constituted school board charged with the duty to operate, control and supervise all free public schools within the school district of Miami-Dade County, Florida, pursuant to Article IX, Section IV, of the Florida Constitution, and Section 230.03, Florida Statutes.

2. Petitioner is a resident of Miami-Dade County, Florida, and the parent of a child enrolled in the Miami-Dade County Public School System (MDCPS) as a ninth-grade student at Miami Killian Senior High School (Killian).[3]

3. Petitioner is currently serving as the parent representative on the Educational Excellence Council at Killian.

4. As Petitioner states in her "resume" (Petitioner's Exhibit 18), she is "an advocate for better education," and, "as such . . . ha[s] participated in committees, written numerous research-based reports, attended countless School Board meetings,[4] and testified at many public hearings."

5. Over the years, when she has had concerns regarding practices or policies at her children's schools, she has made these concerns known to School Board administrators and School Board members.

6. Petitioner is challenging, as an invalid exercise of delegated legislative authority as defined in Section 120.52(8), Florida Statutes, language found in parts of the School Site Administrator Performance Planning and Assessment System (PPAS), which is contained in section C of the Manual of Administrative Personnel Procedures (MAPP) and which, together with the remaining portions of the MAPP, is incorporated in, and made a part of, School Board Rule 6Gx13-4D-1.022.

7. Subsection C-1 of the PPAS (which Petitioner is not challenging) sets forth the "[s]cope and [p]urpose" of the PPAS. It provides as follows:

> This section, effective with the 1998-1999 school year, sets forth the rules, regulations and procedures for the establishment, maintenance, and administration of the performance planning and assessment system applicable to school site managerial personnel.

8. Subsection C-2 of the PPAS contains a "[s]tatement of [p]olicy." It provides as follows:

> The Miami-Dade County Public Schools Performance Planning and Assessment System was developed as an aid to improving the performance and developing the potential of every administrator. A performance plan mutually developed by the administrator and the supervisor consists of three major components:
>
> - Developing plans directly linked to overall job functions as related to the job duties and responsibilities, school site target objectives, and/or major system objectives, as applicable.

- Improving job performance by reviewing past assessments and setting expectations for improvement or enhancement.

- Developing personal potential through emphasis on standards required for success and professional growth in the present job, as well as preparation for future career goals.

In evaluating performance standards, the emphasis is placed on collecting data which indicate that the individual demonstrates or practices the performance standards established for the assigned position and the school site target objectives. The performance assessment procedures set forth herein shall be adhered to strictly. Administrators shall have their performance evaluated by their immediate supervisor (assessor) and their assessor's supervising administrator (reviewer) only. Formal assessments and evaluations placed in administrator's official personnel files shall be in compliance with the procedures and instruments of the Performance Planning and Assessment System.

Administrators being appraised need to be aware of the rationale, intent and procedures of the performance assessment system in relation to their job assignment. Florida Department of Education Performance Assessment System guidelines:

- specify that a comprehensive performance assessment system is fair, equitable, and legally sound;

- establish procedures for the collection, retrieval and use of data to provide feedback to an individual, a team, and the system;

- provide data for recognizing high performance through a variety of means;

- consider the specific conditions of the site in establishing expectations;

- promote the growth and development of the individual and the continuous improvement of the organization;

- allocate time to plan, coach and counsel for higher performance;

- provide orientation on the system and skill development in observing, mentoring, coaching and counseling for those in and affected by the system.

Administrators who manage the performance assessment system must have knowledge and skills that go far beyond an academic knowledge of the system. They must understand and be able to respond to evaluative data on the system. They must also be able to link the performance assessment system to the other components of the Comprehensive Human Resources Development System.

Pursuant to Florida Statute 231.29, the system (district) must include a mechanism to give parents and teachers an opportunity to provide input into the administrators performance assessment, when appropriate. The district mechanisms include notification to parents of this provision printed on student report cards and notification to teachers of this provision through memorandum included in staff handbooks. [Underlining added.]

Principals must ensure that all assistant principals are exposed to and/or have experience in the 19 Florida Principal Competencies and the five M-DCPS Technical Skills. There may be cases where an assistant principal may not be assigned to work with all of the competencies and all of the technical skills. However, all assistant principals must be exposed to these competencies and technical skills either through actual experience(s), or attendance at district sponsored workshops, or other professional growth activities.

9. Petitioner is challenging the underlined language of subsection C-2 of the PPAS set forth above (Input Provision), which was added to School Board Rule 6Gx13-4D-1.022 (Rule) on or about November 7, 1997.

10. Before amending the Rule to add the Input Provision, the School Board published a Notice of Intended Action (dated September 12, 1997), which read, in pertinent part, as follows:

> PURPOSE AND EFFECT: To amend Board Rule 6Gx13-4D-1.022, Manual of Administrative Personnel Procedures, by revising the document, Manual of Administrative Personnel Procedures (MAPP), which is incorporated by reference and is part of this rule, in order to be in compliance with new state legislation, Section 231.29 . . ., Florida Statute[s].
>
> SUMMARY: The revised rule provides language describing the mechanism to be used in the District for giving parents and teachers input into administrative assessment as appropriate. . . .
>
> SPECIFIC AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 230.22(2), F.S.
>
> LAW IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC: 231.02; 231.0861; 231.087(1); 236.0811, F.S.; 6A-4.0083; 61-4.0084 FAC.

In addition, the School Board placed an advertisement in the September 29, 1997, edition of the Miami Daily Business Review, which read, in pertinent part, as follows:

> NOTICE
>
> The School Board of Dade County, Florida, announces the following Board Rule action will be taken at its 1:00 p.m. meeting on:

November 5, 1997

School Board Auditorium
1450 N. E. Second Avenue
Miami, Florida 33132

To Amend:

6Gx13-4D-1.022, Manual of Administrative Personnel Procedures (MAPP), in order to be in compliance with new state legislation, Section 231.29 . . ., Florida Statutes[s].

Specific Authority: 230.22(2), F.S.

Law Implemented, Interpreted, or Made Specific: 231.02; 231.0861; 231.087(1); 236.0811, F.S.; 6A-4.0083; 61-4.0084 FAC

11. Although Section 231.29, Florida Statutes, was mentioned in the Input Provision, neither the "Specific Authority," nor the "Law Implemented, Interpreted or Made Specific" portions of the November 5, 1997, amended version of the Rule contained any reference to Section 231.29, Florida Statutes.

12. It was not until the day after the October 21, 1998, School Board meeting (the last School Board meeting at which members of the School Board took action to amend the Rule) that Section 231.29, Florida Statutes, was added to the "Law Implemented, Interpreted or Made Specific" portion of the Rule. The addition was made, not by the members of the School Board, but by the School Board Clerk, Ileana Menendez, who believed that such action was authorized by School Board Rule 6Gx13-8C-1.061, which, at all times material to the instant case, has provided as follows:

> CORRECTION OF CERTAIN ERRORS IN RULES
>
> The Superintendent of Schools, as Secretary to the Board, shall have the authority to review the School Board Rules and when judged useful shall:
>
> 1. Correct grammatical, typographical, and like errors not affecting the construction or meaning of the rules;
>
> 2. Keep a record of corrections made pursuant to subsection 1; and
>
> 3. Report to the Board any corrections made.

Ms. Menendez reported the "correction" she had made to the Office of the School Board Attorney.

13. The English version of the "notification to parents . . . printed on student report cards,"[5] which is referred to in the Input Provision, reads as follows:

> FLORIDA LAW PROVIDES FOR PARENT INPUT ON TEACHER/ADMINISTRATOR PERFORMANCE, WHEN APPROPRIATE. FOR MORE INFORMATION, CONTACT THE SCHOOL, PRINCIPAL, OR THE REGION OFFICE.

14. By providing such notification, the School Board alerts the parent to the parent's opportunity to provide (at any time the parent deems appropriate) information and opinion regarding an administrator's performance for consideration by those (specially-trained individuals) charged with the responsibility of evaluating the administrator's performance.

15. The significance of the "19 Florida Principal Competencies" referred to in the paragraph immediately following the Input Provision is described in subsection C-7 of the PPAS, which reads as follows:

PERFORMANCE CRITERIA

In order to qualify for a rating Distinguished Performance Standards on the annual evaluation form, assessees must be rated Distinguished Performance Standards on 18 out of the 19 Florida Principal Competencies and rated as Distinguished Performance Standards on five out of the five M-DCPS Technical Skills, and on Performance Related to Job Targets.

In order to qualify for a rating Commendable Performance Standards, assessees must be rated as Commendable Performance Standards on 17 out of the 19 Florida Principal Competencies and rated as Commendable Performance Standards on four out of the five M-DCPS Technical Skills. Performance Related to Job Targets must be at least 90% accomplished (C-8 through C-11).

In order to qualify for a rating Competent Performance Standards, assessees must be rated as Competent Performance Standards on 16 out of the 19 Florida Principal Competencies and rated as Competent Performance Standards on three out of the five M-DCPS Technical Skills. Performance Related to Job Targets must be at least 80% accomplished (C-8 through C-11).

Assessees not exhibiting the minimum number of indicators listed for each standard of the 19 Florida Principal Competencies and/or the five M-DCPS Technical Skills, and/or who have not met their Performance Related to Job Targets will receive an overall rating of Below Expectations on Performance Standards and will require a Professional Improvement Plan (C-8 through C-11).

16. The "19 Florida Principal Competencies" are listed and explained in subsection C-8 of the PPAS. "Florida Principal Competency" (FPC) No. 11 is "tactical adaptability," which is described in subsection C-8 of the PPAS as follows:

> TACTICAL ADAPTABILITY is the ability to adapt one's interaction and behavior to fit the situation. (3 out of 4)
>
> DIMENSIONS: ADAPTABILITY: Maintaining effectiveness in varying environments, tasks, responsibilities or with people; FLEXIBILITY: Modifying behavior to reach a goal; INDIVIDUAL LEADERSHIP: Utilizing appropriate interpersonal styles to guide individuals to task accomplishment.
>
> The principal who has TACTICAL ADAPTABILITY:
>
> 11.1 adopts roles of listener, facilitator and confronter as needed
>
> 11.2 finds ways to get around policies and procedures which interfere with the school's goals
>
> 11.3 looks at problems as if there are no rules, then decides what to do to resolve the situation tactfully
>
> 11.4 understands how own behavior affects others and makes appropriate adjustments.

17. Except for the language in numbered paragraph 11.2, which Petitioner is no longer challenging (as a result of the School Board's agreement to initiate action to replace it with other language agreeable to Petitioner[6]), the foregoing, including the language in numbered paragraph 11.3 (Paragraph 11.3), the validity of which (along with the Input Provision) Petitioner disputes, is a verbatim recital of language contained in the Florida Principal Competencies section of the Human Resources Management and Development System Guidelines in Florida's School Districts developed, after study and scientific research, by the Florida Council on Educational Management.

CONCLUSIONS OF LAW

18. In the instant case, Petitioner is challenging the Input Provision and Paragraph 11.3 (which have been incorporated in, and made a part of, the Rule) pursuant to Section 120.56, Florida Statutes, which provides, in pertinent part, as follows:

> (1) General procedures for challenging the validity of a rule . . . .--
>
> (a) Any person substantially affected by a rule . . . may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.
>
> (b) The petition seeking an administrative determination must state with particularity the provisions alleged to be invalid with sufficient explanation of the facts or grounds for the alleged invalidity and facts sufficient to show that the person challenging a rule is substantially affected by it . . . .
>
> (c) The petition shall be filed with the division which shall, immediately upon filing, forward copies to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if the petition complies with the requirements of paragraph (b), assign an administrative law judge who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown. . . . The failure of an agency to follow the applicable rulemaking procedures or requirements set forth in this chapter shall be presumed to be material; however, the agency may rebut this presumption by showing that the substantial interests of the petitioner and the fairness of the proceedings have not been impaired.

> (d) Within 30 days after the hearing, the administrative law judge shall render a decision and state the reasons therefor in writing. The division shall forthwith transmit copies of the administrative law judge's decision to the agency, the Department of State, and the committee.
>
> (e) Hearings held under this section shall be conducted in the same manner as provided by ss. 120.569 and 120.57, except that the administrative law judge's order shall be final agency action. The petitioner and the agency whose rule is challenged shall be adverse parties. Other substantially affected persons may join the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section shall not constitute failure to exhaust administrative remedies. . . .
>
> (3) Challenging existing rules; special provisions.--
>
> (a) A substantially affected person may seek an administrative determination of the invalidity of an existing rule at any time during the existence of the rule.
>
> (b) The administrative law judge may declare all or part of a rule invalid. The rule or part thereof declared invalid shall become void when the time for filing an appeal expires. The agency whose rule has been declared invalid in whole or part shall give notice of the decision in the Florida Administrative Weekly in the first available issue after the rule has become void.

19. "In accordance with the general rule, applicable in court proceedings, 'the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal.'" Florida Department of Transportation v. J.W.C. Company, 396 So. 2d 778, 788 (Fla. 1st DCA 1981); see

also Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996)("'The general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that issue."). Because Chapter 120, Florida Statutes, does not provide otherwise,[7] a person, like Petitioner, challenging an existing rule has the burden of showing that the challenged rule is invalid. See Cortes v. State Board of Regents, 655 So. 2d 132, 135-136 (Fla. 1st DCA 1995); Humana, Inc., v. Department of Health and Rehabilitative Services, 469 So. 2d 889, 890 (Fla. 1st DCA 1985)("One who attacks the validity of a rule on the grounds of arbitrariness or capriciousness carries the burden of demonstrating by a preponderance of the evidence that the rule is not supported by fact or logic, was adopted without thought or reason or is otherwise not based upon competent, substantial evidence.").

20. An existing rule may be challenged pursuant to Section 120.56, Florida Statutes, only on the ground that it is an "invalid exercise of delegated legislative authority," as defined in Section 120.52(8), Florida Statutes,[8] which provides as follows:

> (8) "Invalid exercise of delegated legislative authority" means action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

(a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;[9]

(d) The rule is vague,[10] fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;[11]

(e) The rule is arbitrary or capricious;[12]

(f) The rule is not supported by competent substantial evidence; or

(g) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute.[13]

The Administrative Law Judge assigned to hear the challenge may declare the proposed rule invalid only if one (or more) of the "seven circumstances" enumerated in subsections (8)(a) through (f) of Section 120.52, Florida Statutes, are found to exist. See St. Johns River Water Management District v. Consolidated Tomoka Land Co., 717 So. 2d 72, 77 (Fla. 1st DCA 1998). To base a finding of invalidity on circumstances not specifically mentioned in Section 120.52(8), Florida Statutes, would be an impermissible extension of the Administrative Law Judge's authority beyond the boundaries established by the Legislature. See Moonlit Waters Apartments v. Cauley, 666 So. 2d 898, 900 (Fla. 1996)("Under the principle of statutory construction, expressio unius est exclusio alterius, the mention of one thing implies the exclusion of another."); City of Cape Coral v. GAC Utilities, Inc., of Florida, 281 So. 2d 493, 495-96 (Fla. 1973)("All administrative bodies created by the Legislature are not constitutional bodies, but, rather, simply mere creatures of statute. This, of course, includes the Public Service Commission. . . . . As such, the Commission's powers, duties and authority are those and only those that are conferred expressly or impliedly by statute of the State. . . . Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof, . . . and the further exercise of the power should be arrested."); Coastal Petroleum Company v. Department of Environmental Protection, 649 So. 2d 930

(Fla. 1st DCA 1995)("Relying upon the well established principle that the powers of administrative agencies are measured and limited by the statutes or acts in which such powers are expressly granted or implicitly conferred, . . . the appellants correctly argue that the final order must be reversed because the department acted without authority and contrary to legislative intent when it required security in excess of the annual fund fee."); Sun Coast International, Inc. v. Department of Business Regulation, 596 So. 2d 1118, 1121 (Fla. 1st DCA 1991)("[A] legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way."); Schiffman v. Department of Professional Regulation, Board of Pharmacy, 581 So. 2d 1375, 1379 (Fla. 1st DCA 1991) ("An administrative agency has only the authority that the legislature has conferred it by statute."); Department of Environmental Regulation v. Puckett Oil, 577 So. 2d 988, 991 (Fla. 1st DCA 1991)("We are of the view that if it was DOAH's intent in adopting rule 22I-6.035(5)(a) to establish a jurisdictional time limitation upon the filing of an agency's responsive pleading to a petition for fees and costs, DOAH has acted in excess of any express or reasonably implied delegated legislative authority. It is well recognized that the powers of administrative agencies are measured and limited by the statutes or acts in which such powers are expressly granted or implicitly conferred.").

21. In the instant case, Petitioner objects to the challenged portions of the Rule on substantive and procedural grounds. Among her arguments is that Paragraph 11.3 "exceed[s] Respondent's grant of rulemaking authority and/or enlarge[s], modif[ies] or contravene[s] the specific provisions of law implemented; and as result, that portion of the MAPP should be declared an invalid exercise of delegated legislative authority."

22. "[T]he review standards for assessing the [substantive] validity of proposed rules [were] drastically altered by the 1996 amendments to Florida's Administrative Procedure Act. . . . [T]he 1996 [L]egislature intended, through its enactment of sections 120.52(8) and 120.536(1),[14] Florida Statutes . . . to overrule earlier Florida decisions to the extent that they had held a rule was a valid exercise of delegated legislative authority if it was reasonably related to the enabling statute and not arbitrary or capricious." Department of Business and Professional Regulation v. Calder Race Course, Inc., 724 So. 2d 100, 101-02 (Fla. 1st DCA 1998).

23. Under the current statutory framework, "the proper test to determine whether a rule is a valid exercise of delegated authority is a functional test based on the nature of the power or duty at issue and not the level of detail in the language of the applicable statute. The question is whether the rule falls within the range of powers the Legislature has granted to the agency for the purpose of enforcing or implementing the statutes

within its jurisdiction. A rule is a valid exercise of delegated legislative authority if it regulates a matter directly within the class of powers and duties identified in the statute to be implemented. This approach meets the legislative goal of restricting the agencies' authority to promulgate rules, and, at the same time, ensures that the agencies will have the authority to perform the essential functions assigned to them by the Legislature." St. Johns River Water Management District v. Consolidated Tomoka Land Co., 717 So. 2d 72, 80-81 (Fla. 1st DCA 1998); see also Department of Business and Professional Regulation v. Calder Race Course, Inc., 724 So. 2d 100, 102 (Fla. 1st DCA 1998)("We reiterate that the term 'particular powers and duties granted by the enabling statute,' as used in amended sections 120.52(8) and 120.536(1), requires a determination of whether the rule 'falls within the range of powers the Legislature has granted to the agency for the purpose of enforcing or implementing the statutes within its jurisdiction.'"); Agency for Health Care Administration, Board of Clinical Laboratory Personnel v. Florida Coalition of Professional Laboratory organizations, 718 So. 2d 869, 871 (Fla. 1st DCA 1998)("In our opinion, the primary means for examining the validity of a rule--existing or proposed--continues to be whether the contested rule falls within the 'particular powers and duties granted by the enabling statute.'").

24. Applying these principles to the instant case, it is evident that Paragraph 11.3 is not beyond the scope of the School Board's statutory authority.

25. Section 230.23, Florida Statutes, describes the "powers and duties" of district school boards, including those (set forth in subsection (5) of the statute) relating to "personnel" matters. Subsection (18) of the statute authorizes district school boards to "[a]dopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section." A more specific grant of authority to district school boards to adopt personnel-related "policies and procedures" is found in Section 230.23005(11), Florida Statutes, which provides that a "school board may adopt policies and procedures necessary for the management of all personnel of the school system."

26. Paragraph 11.3 is among such "policies and procedures" that the School Board has adopted in an effort to comply with the legislative mandate, set forth in Section 231.29(1), Florida Statutes, that each school district have in place "procedures for assessing the performance of duties and responsibilities of all . . . administrative, and supervisory personnel employed by the school district." Petitioner does not contest the School Board's authority to adopt, by rule, a school site administrator performance assessment system, which identifies standards upon which these administrators will be evaluated. Rather, it appears that she objects specifically to Paragraph 11.3 because she does

not believe that it is appropriate for a principal to be rewarded, in terms of receiving a favorable assessment, for "look[ing] at problems as if there were no rules, then decid[ing] what to do to resolve the situation favorably." A review of the record in the instant case, however, does not support the conclusion that the School Board's decision to include Paragraph 11.3 in the PPAS was without reason or logic or was otherwise inappropriate or unlawful. To the contrary, the record affirmatively reveals that such action on the part of the School Board constituted a reasonable and valid exercise of authority that it has been delegated by the Legislature.

27. Paragraph 11.3 was taken, word-for-word, from the Florida Principal Competencies section of the Human Resources Management and Development System Guidelines in Florida's School Districts (HRMDS Guidelines) developed, after study and scientific research, by the Florida Council on Educational Management (FCEM). The FCEM was created by Section 231.087, Florida Statutes, subsections (1) through (3) of which provide as follows:

> (1) Intent.--The Legislature recognizes that quality education in the public schools of this state requires excellence in its principals and other managers. Efficient and effective management of schools to meet the needs of students in today's society requires a unique blend of skills, experience, and academic background which is rarely provided through typical baccalaureate or graduate programs in education. The purpose of this section is to provide for a state, regional, and district support system for excellence in

principals and other educational managers. This support system shall include the identification of those competencies basic to effective management of schools; a performance-based management training program; a program of competency-based certification for school managers, to become effective July 1, 1986; a performance-based evaluation and compensation program for educational managers; and a research and service center for principals and other educational managers. It is further intended that this section encourage career development, inservice training, and skills enhancement for present and potential education managers.

(2) Florida council on educational management.--

(a) There is created the Florida Council on Educational Management, to consist of 17 members appointed by the Governor, President of the Senate, and Speaker of the House of Representatives after consultation with the appropriate professional associations, including representatives of the private-sector management community.

1. The Governor, President of the Senate, and Speaker of the House of Representatives shall each appoint two members from the principals of the district school systems of the state.

2. The Governor, President of the Senate, and Speaker of the House of Representatives shall each appoint one member from the faculties of the institutions of higher learning in the state which offer programs in business administration, educational management, or social sciences.

3. The Governor, President of the Senate, and Speaker of the House of Representatives shall each appoint one member from the private-sector management community.

4. The Governor shall appoint one member each from the following categories:

a. Elected school superintendent.

b. Appointed school superintendent.

c. District school board member.

d. District school personnel engaged in management training.

e. Department of Education personnel with systemwide management responsibilities.

(b) Each member shall serve for a term of 4 years, and terms shall be staggered. Each member shall be entitled to receive per diem and expenses for travel as provided in s. 112.061 while carrying out official business of the council. The members shall elect annually a chair and such other officers as may be necessary. A vacancy shall be filled in the same manner as the original appointment and shall be filled for the remainder of the term.

(c) The council shall be assigned to the Department of Education for administrative purposes.

(3) Duties of council.--The council shall have the following duties:

(a) To identify those competencies which characterize high-performing principals and other managers in the public schools of this state.[15]

(b) To validate through scientific research the identified competencies.

(c) To identify standards and procedures for measuring and evaluating performance of the identified competencies.

(d) To identify the training processes required for school managers to acquire the identified competencies and to develop training materials which cannot be obtained from existing sources.

(e) To identify the procedures necessary to develop and implement a program of competency certification for school managers.

(f) To develop the policies and procedures necessary to adopt and implement a compensation program for school managers which is based on successful performance of the identified competencies.

(g) To identify criteria for the screening, selection, and appointment of school managers.

(h) To develop and approve guidelines for the approval of school district training programs used for the certification of principals.

(i) To establish an educational management and development network to facilitate communication, involvement, and mutual assistance among the educational managers.

(j) To serve as the Board of Directors of the Florida Academy for School Leaders.

(k) To report no later than September 1 of each year for the previous fiscal year to the Commissioner of Education, the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the Senate and House of Representatives committees on public school education on the expenditures, activities, and accomplishments of the council, the academy, and the Center for Interdisciplinary Advanced Graduate Study. Such report shall also include a statement of the objectives and overall program for the coming year, the recommended level of funding for the overall program for that year, and any other recommendations deemed by the council to be appropriate.

(l) To perform such additional studies and activities as are necessary to achieve the purpose of this act.

Not rejecting, but rather adopting, as the School Board has done in Paragraph 11.3, one of the FCEM-identified "standards and procedures for measuring and evaluating performance of the [FCEM-]identified [scientifically validated] competencies . . . which characterize high-performing principals" is consistent with, not contrary to, the intent expressed by the Legislature in subsection (1) of Section 231.087, Florida Statutes, and within the range of powers granted to the School Board by the Legislature.

28. Contrary to the argument advanced by Petitioner, there is no legal basis upon which the School Board's adoption of the language in Paragraph 11.3 may be invalidated pursuant to Chapter 120, Florida Statutes.

29. With respect to the Input Provision, Petitioner contends that it should be "declared an invalid exercise of delegated legislative authority" because it fails to properly "implement[], interpret[] and/or mak[e] [S]ection 231.29, F. S., specific," and "is vague, fails to establish adequate standards for agency decisions and/or vests unbridled discretion in the agency."

30. The first sentence of the Input Provision simply states that Section 231.29, Florida Statutes, requires the School Board to develop a "mechanism to give parents and teachers an opportunity to provide input into the administrators performance assessment, when appropriate." This is an accurate statement of

the law that is no less clear, precise and understandable than the statutory provision it discusses. The second sentence of the Input Provision describes, in a clear and unambiguous manner, the "mechanism" the School Board uses to provide parents and teachers a chance to give the input discussed in the previous sentence. While the described "mechanism" may not be the only one the School Board could have selected to comply with the requirement of Section 231.291(5), Florida Statutes, the School's Board's interpretation of the statute to allow such a "mechanism" (which interpretation is codified in the Input Provision) is a reasonable one and does not constitute an "invalid exercise of delegated legislative authority," as defined in Section 120.52(8), Florida Statutes. See Orange Park Kennel Club v. Department of Business and Professional Regulation, 644 So. 2d 574, 576 (Fla. 1st DCA 1994)("An agency's construction of a statute which it administers is entitled to great weight and will not be overturned unless the agency's interpretation is clearly erroneous; the agency's interpretation need not be the sole possible interpretation or even the most desirable one; it need only be within the range of possible interpretations.").

31. Petitioner also contends that the School Board failed to follow the required rulemaking procedures when it amended the Rule to include the Input Provision. Among the procedural rulemaking requirements set forth in Chapter 120, Florida Statutes, which, if not followed, may result in a finding that

there has been "an invalid exercise of delegated legislative authority," as contemplated by subsection (8)(a) of Section 120.52, Florida Statutes, are those notice requirements found in subsection (3)(a) of Section 120.54, Florida Statutes, which provides, in pertinent part, as follows:

> (3) ADOPTION PROCEDURES.-
>
> (a) Notices.-
>
> 1. Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the full text of the proposed rule or amendment and a summary thereof; a reference to the specific rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented, interpreted, or made specific. . . .

Prior to adding the Input Provision to the Rule, the School Board gave written notice of its intended action. Although neither the "Specific Authority," nor the "Law Implemented, Interpreted or Made Specific" portions of the notice contained any reference to Section 231.29, Florida Statutes, elsewhere in the notice the School Board clearly conveyed that the addition of the Input Provision was being made "to be in compliance with new state legislation, [Section] 231.29," Florida Statutes. Accordingly, to the extent that the failure of the School Board to include a reference to Section 231.29, Florida Statutes, in either the "Specific Authority" or "Law Implemented, Interpreted or Made

Specific" portions of the notice was a violation of the rulemaking requirements set forth in Section 120.54(3)(a), Florida Statutes, the violation was harmless and not material (in that it did not impair anyone's substantial interests or the fairness of the rulemaking process), and it therefore does not warrant invalidation of the Input Provision.

32. Inasmuch as Petitioner has failed to show that the portions of the Rule she is challenging constitute "invalid exercises of delegated legislative authority," within the meaning of Section 120.52(8), Florida Statutes, as she has alleged, her petition challenging these portions of the Rule is hereby DISMISSED.[16]

DONE AND ORDERED this 2nd day of June, 1999, in Tallahassee, Leon County, Florida.

STUART M. LERNER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of June, 1999.

ENDNOTES

1/ In her petition, Petitioner also challenged other language in subsection C-8 of the MAPP, under Florida Principal Competency

(FPC) No. 11 ("The principal who has TACTICAL ADAPTABILITY: finds ways to get around policies and procedures."). The parties, however, resolved their dispute concerning this language, when, at the final hearing in this case, Respondent agreed to initiate action to revise this portion of the MAPP to read: "The principal who has TACTICAL ADAPTABILITY: finds ways to overcome barriers that impede school progress.".

2/ There being no reason not to do so, the undersigned has accepted the parties' statement, in their Pre-Hearing Stipulation, of "facts which have been admitted and require no proof." See Gunn Plumbing, Inc. v. The Dania Bank, 252 So. 2d 1, 4 (Fla. 1971)("A stipulation properly entered into and relating to a matter upon which is appropriate to stipulate is binding upon the parties and the Court."); Johnson v. Johnson, 663 So. 2d 663, 665 (Fla. 2d DCA 1995)("[T]o foster the legal policy of encouraging stipulations to minimize litigation and expedite resolution of disputes, the law provides that '(s)uch stipulations should be enforced if entered into with good faith and not obtained by fraud, misrepresentation, or mistake, and not against public policy.'"); EGYB, Inc. v. First Union National Bank of Florida, 630 So. 2d 1216, 1217 (Fla. 5th DCA 1994)("Unless grounds for recission or withdrawal are shown, the trial court is bound to strictly enforce the agreement between the parties.").

3/ Petitioner also has an older child who is a "MDCPS graduate."

4/ Petitioner attends approximately 90 percent of the School Board's meetings and frequently addresses School Board members regarding items on the agenda that are of interest to her.

5/ The notification is printed in both English and Spanish.

6/ See footnote 1 above.

7/ Unlike subsection (2) of Section 120.56, Florida Statutes, which addresses challenges to proposed rules, subsection (3) of the statute does not contain any language suggesting that the agency, in a proceeding involving a challenge to one of its existing rules, has the burden of proof. See Agency for Health Care Administration, Board of Clinical Laboratory Personnel v. Florida Coalition of Professional Laboratory Organizations, Inc., 718 So. 2d 869, 871 (Fla. 1998) ("We agree with appellant that the 1996 amendments to the Administrative Procedure Act (APA), chapter 120, Florida Statutes, have placed on the agency 'the ultimate burden of persuasion to show that the proposed rule is a valid exercise of delegated legislative authority.'"); St. Johns River Water Management District v. Consolidated Tomoka Land Co., 717 So. 2d 72, 76 (Fla. 1st DCA 1998)("A party challenging a

proposed rule [pursuant to Section 120.56, Florida Statutes] has the burden of establishing a factual basis for the objections to the rule, and then the agency has the ultimate burden of persuasion to show that the proposed rule is a valid exercise of delegated legislative authority."); Section 120.56(2)(a), Florida Statutes ("The petition shall state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The agency then has the burden to prove that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised.").

8/ It was not until 1987 that a definition for an "invalid exercise of delegated legislative authority" was added to Chapter 120, Florida Statutes, as was observed in Florida League of Cities v. Department of Environmental Regulation, 603 So. 2d 1363, 1367 (Fla. 1st DCA 1992). See Chapter 87-385, Section 2, Laws of Florida.

9/ A rule that merely tracks the language of its enabling statute is not an "invalid exercise of delegated legislative authority," within the meaning of either subsection (b) or (c) of Section 120.52(8), Florida Statutes. See Ameriquatic, Inc. v. Department of Natural Resources, 651 So. 2d 114, 119 (Fla. 1st DCA 1995)("We agree with the hearing officer's ruling that, because the criteria in proposed rule 16C-20.0055(1)(a)5 track the language in section 369.20, Florida Statutes, the rule does not exceed the statutory authorization or enlarge, modify or contravene the statute."). A "person regulated by the agency or having substantial interest in an agency rule" who wants the agency to adopt a rule that does more than merely restate or paraphrase statutory language can file a petition to initiate rulemaking pursuant to Section 120.54(7), Florida Statutes, which "specif[ies] the proposed rule and the action requested."

10/ A rule is vague if persons of common intelligence must guess the rule's meaning and if persons affected by the rule are not properly apprised of the rule's effect on them. See City of St. Petersburg v. Pinellas County Policy Benevolent Association, 414 So. 2d 293 (Fla. 2d DCA 1982).

11/ "An administrative agency must have some discretion when a regulatory statute is in need of construction in its implementation. . . . An administrative rule by which an agency exercises such discretion, or which fails to extinguish the discretion a statute confers, is not invalid on that account." Cortes v. State Board of Regents, 655 So. 2d 132, 137 (Fla. 1st DCA 1995); see also Florida Public Service Commission v. Florida Waterworks Association, 24 Fla. L. Weekly D1177b (1999 WL 285825)(Fla. 1st DCA May 10, 1999)("A rule which 'fails to

establish adequate standards for agency decisions, or vests unbridled discretion in the agency,' s. 120.52(8)(d), Fla. Stat. (Supp. 1996), is invalid. But no rule is properly invalidated simply because 'governing statutes, not the challenged rule, confer ... discretion.'").

12/ An "arbitrary" action is "one not supported by facts or logic, or [is] despotic." A "capricious" action is "one which is taken without thought or reason or [is] irrational[]." Agrico Chemical Co. v. Department of Environmental Regulation, 365 So. 2d 759, 763 (Fla. 1st DCA 1978); see also Board of Clinical Laboratory Personnel, v. Florida Association of Blood Banks, 721 So. 2d 317, 318 (Fla. 1st DCA 1998)("An 'arbitrary' decision is one not supported by facts or logic. A 'capricious' action is one taken irrationally, without thought or reason.") Action that the Legislature specifically authorizes an agency to make is neither arbitrary nor capricious.

13/ The provisions of Section 120.58, Florida Statutes, following subsection (e) were added in 1996. See Chapter 96-159, Laws of Florida.

14/ Section 120.536(1), Florida Statutes, provides as follows:

> 120.536 Rulemaking authority; listing of rules exceeding authority; repeal; challenge.-
>
> (1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute.

15/ The "competencies which characterize high-performing principals" referred to in subsection (3)(a) of Section 231.087,

Florida Statutes, are also mentioned in Section 286.0861(1), Florida Statutes, and the Department of Education's Rule 6A-4.0083, Florida Administrative Code, which are among the statutory and rule provisions cited by the School Board as the "Law Implemented, Interpreted or Made Specific" in the current version of the Rule. (Sections 231.02, 231.087(1), 231.29, and 236.0811, Florida Statutes, and Rule 6A-4.0084, Florida Administrative Code, are the other provisions.) Section 286.0861(1), Florida Statutes, provides as follows:

> The Legislature recognizes that the principal is the administrative and instructional leader of a public school. The Legislature further recognizes that strong, competent principals can improve our public schools. For this reason, it is imperative that public school principals be selected from those candidates who have been evaluated and certified as possessing the competencies deemed necessary for success in the field.

Rule 6A-4.0083, Florida Administrative Code, provides as follows:

> To be eligible to receive certification as a school principal, an individual shall satisfy each of the following requirements:
>
> (1) Hold a valid professional certificate covering educational leadership, administration, or administration and supervision.
>
> (2) Document successful performance of the duties of the school principalship. These duties shall be performed in an approved district management training and development program designed and implemented consistent with the program described in the publication titled, Preparing New Principals, 1985, approved by the Florida Council on Educational Management, which is hereby incorporated and made a part of this rule. In addition, these duties shall:
>
> (a) Be performed as a full-time employee of a district school board and assigned to perform the duties of an assistant principal, intern principal, or an interim principal for a period of not less than one (1) full school

year which is ten (10) months or more in length.

(b) Be a formally planned professional development program designed and implemented to prepare the individual to become a school principal.

(c) Be comprehensive of all the duties of the school principalship.

(d) Be performed under the direct supervision of a currently practicing school principal or district manager who has been approved by the district school board to serve as the supervising principal or manager for this program.

(3) Demonstrate successful performance of the competencies of the school principalship which shall be documented by the Florida district school superintendent based on a performance appraisal system approved by the district school board and the Department. The performance appraisal system shall be consistent with Guidelines for District Performance Appraisal Systems, January, 1985, approved by the Florida Council on Educational Management, which is hereby incorporated and made a part of this rule. A comprehensive performance appraisal system:

(a) Has clearly stated purposes.

(b) Promotes individual and organizational growth.

(c) Is used for personnel decisions.

(d) Is fair, equitable and legally sound.

(e) Provides for negotiation of expectations in relation to situations.

(f) Values appraisee input.

(g) Requires planning, feedback, and coaching.

(h) Has procedures for collection and retrieval of data for decision making.

(i) Links rewards to performance.

(j) Establishes criteria for assessment.

(k) Provides training and orientation of participants.

(4) An individual who holds a valid Florida Educator's Certificate covering administration or administration and supervision issued prior to July 1, 1986 and served as a school principal prior to July 1, 1986 for not less than one (1) school year may apply for certification as a school principal under the provisions of Rule 6A-4.0085, FAC.

(5) Only individuals who meet the requirements for certification as a school principal shall be appointed by a district school board to the position of school principal; however, when deemed by the school board to be necessary and in the best interests of the students of the school, an individual who holds a certificate in educational leadership, administration or administration and supervision, including experienced out-of-state principals as provided by Section 231.0861(4), Florida Statutes, may on the basis of objective screening and appointment procedures as provided in Section 231.0861, Florida Statutes, be appointed as an interim principal for a period not to exceed one (1) year during which the individual must successfully demonstrate performance of the duties of the principalship as provided in Rule 6A-4.0083(2), FAC.

(6) Individuals who do not meet the requirements for certification as school principal but who hold valid certificates covering educational leadership, administration, or administration and supervision may, subject to the procedures established by each district school board, apply for vacancies of intern assistant

> principal, assistant principal, intern principal, interim principal, and other positions for which this certification coverage is valid.
>
> (7) All principals, intern principals, and assistant principals appointed by each district school board shall be selected and appointed using an objective- based process which documents that the applicant possesses the competencies necessary for successful performance of the duties as required by Section 231.0861, Florida Statutes. The objective-based process for screening, selection, and appointment shall be consistent with Criteria for School District Screening, Selection, and Appointment Process for Principals and Assistant Principals, September, 1984, approved by the Florida Council on Educational Management, which is hereby incorporated and made a part of this rule.

16/ The School Board has contested Petitioner's standing to bring the instant rule challenge. Standing has been described as "that sufficient interest in the outcome of litigation which will warrant the [tribunal's] entertaining it." General Development Corporation v. Kirk, 251 So. 2d 284, 286 (Fla. 2d DCA 1971). The Florida Legislature has incorporated this notion of standing in Section 120.56(3), Florida Statutes. Not everyone can challenge the validity of an existing agency rule pursuant to this statutory provision. Such a challenge may be initiated only by those persons who are able to establish that they are "substantially affected," which requires a showing of "(1) a real and sufficiently immediate injury in fact [that is not based on pure speculation or conjecture]; and (2) 'that the alleged interest [injured] is arguably within the zone of interest to be protected or regulated.'" Ward v. Board of Trustees of the Internal Improvement Trust Fund, 651 So. 2d 1236, 1237 (Fla. 4th DCA 1995). While the School Board's argument that Petitioner has not made such a showing in the instant case is a persuasive one, it is unnecessary to decide the point given the undersigned's ruling on the merits of Petitioner's challenge.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the Clerk of the Division of Administrative Hearings and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.